MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
February 25, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:13 a.m. on Wednesday, February 25, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus Conklin, Clark County Assembly District No. 37
Assemblyman John Oceguera, Clark County Assembly District No. 16

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Julie Kellen, Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

Debra Gallo, Director, Government and State Regulatory Affairs, Southwest Gas Corporation, Las Vegas, Nevada
Judy Stokey, Director, Governmental Affairs, NV Energy, Las Vegas, Nevada
Garrett Gordon, Lewis and Roca, Carson City, Nevada, representing Olympia Group, Las Vegas, Nevada
Angela Rock, Olympia Group Companies, Las Vegas, Nevada
Bob Gastonguay, Executive Director, Nevada State Cable Telecommunications Association, Reno, Nevada
Robert Robey, Private Citizen, Las Vegas, Nevada
Bill Bradley, representing Nevada Justice Association, Reno, Nevada
Kevin Wallace, President, CAMEO, Las Vegas, Nevada
Teresa McKee, representing Nevada Association of Realtors, Reno, Nevada
Michael Buckley, Commissioner, Commission for Common Interest Communities and Condominium Hotels, Las Vegas, Nevada
Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Reno, Nevada
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry

Chairman Anderson:
[Roll taken.] We will open the hearing on Assembly Bill 129.

Assembly Bill 129: Revises provisions governing common-interest communities. (BDR 10-34)

Assemblyman Marcus Conklin, Clark County Assembly District No. 37:
For those of you who were in Judiciary last session, you may remember there were quite a few pieces of common-interest community legislation. That legislation got consolidated into one bill, and some meritorious legislation died.

For those of you who are from Clark County, you may note that we have a sizeable number of common-interest communities, probably one of the largest number, per-capita, in the world. A sizeable number of those common-interest communities restrict the ability of people to bring their work vehicles home. Under normal circumstances that may be okay, but there are some people who have jobs that are critical to the needs of our community, most particularly those who have jobs working for the public good, for example, some of our utilities.

The purpose of this piece of legislation is to make sure that people who are on call can protect us and make sure that we have energy, gas, water, et cetera. They should have the ability to bring their work vehicles home so they are able to respond faster to the needs of our community.

Debra Gallo, Directory, Government and State Regulatory Affairs, Southwest Gas Corporation, Las Vegas, Nevada:
Assembly Bill 129 addresses a problem that our employees have experienced, and continue to experience, with parking their company-assigned vehicles in their common-interest communities. It is almost impossible to find many communities that do not have a homeowners' association (HOA). What we are trying to do is bring forward that if parking is allowed—on-street parking, driveway parking, et cetera—that our utility service vehicles be allowed to park there.

We are talking about two types of vehicles for our company. One type is vans that our service technicians do take home every night. Our service technicians are dispatched, start, and stop from home. They have a computer, called a "go-book," and they receive their orders in the morning and are routed from their home. There is no need for them to come to the office more than once a week. I have provided some pictures of the second type of vehicle we are talking about because there is always an interest in what type of truck or vehicle we are talking about (Exhibit C). These vehicles are rotated between employees when they are on call, normally about one week per month. These are our first responders, so when there is an incident they come first. I should let you know that when there is gas involved, the fire department has to wait until our first responder gets there. That is the logic for our employees bringing their trucks home.

Our employees have been issued citations and monetary fines, and recently there was a threat to tow one of our emergency response vehicles. We are not asking for special parking. I am going to talk about section 2 of the bill. Subsections 3 and 4 talk about the parking issue. Subsection 3 deals with utility service vehicles, and subsection 4 deals with law enforcement vehicles—some of those are emergency service vehicles—because they have experienced some of the same problems.

Subsection 3 of section 2 simply states that common-interest communities cannot prohibit the parking of a utility service vehicle by a resident on a driveway, road, street, or alley. It should be noted that what we are saying is "where parking is otherwise allowed." We are not asking for a special parking section. We have an amendment (Exhibit D) that makes that very clear. This includes not only a resident but also a tenant.

I was asked how many of these vehicles we are talking about. We have 18 total. There are 7 in southern Nevada, where the biggest problem is, and 11 in northern Nevada.

Assemblyman Cobb:
Is the intent of your amendment to encourage people to park these utility vehicles in front of their own homes?

Debra Gallo:
Yes, that is our intent. I think there was some concern with the way that the bill was initially drafted that perhaps you would not be parking in front of your own home. The intent is that they would be able to park them in front of their own homes.

Assemblyman Cobb:
I might suggest that Legal take a look at this. The way I read this, it might be considered more expansive than what the intent is. I see the intent in the beginning where it says, "In front of the tenant's unit," but then it says, "Or where parking is otherwise authorized." It seems to be expanding it beyond the intent.

Debra Gallo:
In some of the communities there is visitor parking, and some of our employees have parked their vehicles there, trying to comply, and they have gotten ticketed. That might address that situation.

Assemblyman Cobb:
I see what you are saying, but the problem is that when it says, "Or where parking is otherwise authorized," it includes their neighbors' houses. I think that language needs to be tightened up.

Assemblywoman Dondero Loop:
What amount of time is "extra" when someone has to respond from a remote location? For example, one would leave his home, go to pick up the truck, and go to someone's home that may have a gas leak. What amount of time is that?

Debra Gallo:
Right now, our yard is located at Tropicana and Arville. We do have larger trucks than this, but they are not taken home at night. The first responders leave from their homes when they are on call, and they will get to the location and call in any additional resources that they need. Those additional people would go and get any equipment that they need and then go to the location of the incident. I am not sure how much extra time it would take, as it depends on where they live; however, Tropicana and Arville is not the easiest place to get to with traffic.

Assemblywoman Dondero Loop:
If I had a gas leak, I think I would want someone there in less than 30 minutes to an hour.

Assemblyman Conklin:
There is a line of questioning here that is important to understand. There are two sets of travel, but then there is the additional cost as well. If the person has to leave his house and go to the yard, and that takes a half-hour, that is a half-hour that the rate payer is paying for because it rolls into the rate for gas and electric. There are two sides to this, and it is part of the reason that I thought this was important. This truly is a public good.

Assemblyman Manendo:
On page 2, line 24, why were the words "inoperable vehicle" put into the bill there?

Debra Gallo:
The intention is not to park a vehicle and never drive it. I think that this is a clarification, but it was not something that we had suggested.

Assemblyman Manendo:
I did not know if it was yours or if Legal had put it in.

Debra Gallo:
I believe that it was put in by Legal.

Judy Stokey, Director, Governmental Affairs, NV Energy, Las Vegas, Nevada:
We are in support of everything that Ms. Gallo said regarding the trucks. I am specifically going to speak to section 1 of the bill; section 1 relates to our standards. We have come across situations with some of the HOAs where their rules will not allow the electrical equipment to be put where our standards state that they need to be put for safety reasons. Very few HOAs have that aesthetic type of rule, but we want to make sure that they cannot trump our standards as to where electrical equipment is placed. We have done everything that we can in the standards to make sure that the equipment is hidden. Those provisions are in our standards, and we want to make sure that our employees are safe and they do not have to jump fences and go behind the homes to try to find some of this equipment. It also helps with the privacy of the homeowner.

Garrett Gordon, Lewis and Roca, Carson City, Nevada, representing Olympia Group, Las Vegas, Nevada:
Today I am speaking on behalf of the Olympia Group. I wanted to inform the Committee that we have worked with NV Energy, Hughes Corporation, Southwest Gas, and the sponsor with our suggestions and comments.

Chairman Anderson:
You have seen the amendment that has been proposed?

Garrett Gordon:
Yes. We have a three-word change to the amendment, and some general comments that Ms. Rock will make.

Chairman Anderson:
You have additional amendments that you are planning on making?

Angela Rock, Olympia Group Companies, Las Vegas, Nevada:
Yes. We have spoken with members of NV Energy, and we want to continue to work with them. We do have a minor modification that we are asking for on page 2, section 2, subsection 3, line 27. We are asking to insert the words "notwithstanding anything in the foregoing provisions." To clarify the testimony that was given on section 1; that deals with the placement of meters, and the confusion was that the language in section 1, line 8, talks about rules and standards of a public utility. In speaking with the NV Energy representatives, they clarified that the language of section 1 speaks only to the placement of energy meters and not to commercial vehicles, so we want to separate those two provisions by clarifying that on line 27 we are talking about vehicles. They

were in support of the language "notwithstanding anything in the foregoing provisions."

Assemblyman Horne:
I am unclear about your objections. They are with placement of meter boxes?

Angela Rock:
We have no objection to the provisions about placement of meter boxes. That is fine and is a standard that is necessary. Our concern is getting an understanding of what the rules and standards of a public utility are. When we spoke with NV Energy, they said that those rules and standards, as I understand it, applied only to placement, in which case we have no objection. We want to clarify that.

Chairman Anderson:
We will take a look at the concerns raised by Ms. Rock. I do not believe that you want to stop the bill.

Angela Rock:
Absolutely not. We are in support of the bill, and I think that it is necessary to have emergency response vehicles available and close by those homeowners and individuals who need them. In our communities, we do currently have standards in place to grant variances to these vehicles so that they are available. It is important, necessary, and good for the community. We absolutely do not want to stop the bill.

Assemblyman Carpenter:
Could you explain what your amendment is going to do?

Angela Rock:
What we want to do is clarify that section 1 deals with placement of meters. Those rules and standards that they speak to in section 1 will not speak to parking of the vehicles as is addressed in section 2 of the bill. The concern was that if these public utilities adopt rules and standards, HOAs may not be aware of what those are. If rules and standards are adopted that speak to parking, associations may not be aware of that. Could those rules and standards modify the language in section 2? In speaking with our representatives, that was not a problem. Therefore, we want to include the language that section 2 says "notwithstanding section 1."

I am doing the best I can to clarify that section 1 deals with placement of utility meters, and section 2 deals with parking.

Chairman Anderson:
Section 1 does not deal with that issue at all. That is where you are causing the confusion. As it is presented here, section 1 appears to be dealing with tariff rules and standards of a public utility. The tariff rules are what we are really trying to deal with here, not the overall standards of the public utilities in terms of their light poles or meters.

We are not broadening the power of the utility. I do not believe that your HOA can supersede the Public Utility Commission, can it? It is not your hope to set that standard, is it?

Angela Rock:
No, it was just our hope to clarify. In speaking to NV Energy, they indicated to me that section 1 does deal with placement of meters. We have zero objections to that. It was to clarify that the rules and standards in section 1 did not speak to parking.

Nick Anthony, Committee Counsel:
Mr. Chairman, in looking at the language, I tend to agree with your assessment that subsection 1 of section 1 is clear that it deals with rules and standards of the public utility. Section 2, subsection 3 specifically deals with parking. If you want to add any language to clarify that section 1 applies only to utility meters, the Committee could certainly make that amendment, but at this point, I do not see that it is necessary.

Garrett Gordon:
The intent of the amendment is not to limit tariffs, rules, and standards to only the location of the meters. The worry was if, for instance, a utility's standard was modified to allow or require employees to bring home trucks in excess of 20,000 pounds. You could get into a situation where a standard in section 2 could be in conflict with a standard in section 1. The intent is to say that as far as allowing utility service vehicles to be brought home, they should be 20,000 pounds or less.

Bob Gastonguay, Executive Director, Nevada State Cable Telecommunications Association, Reno, Nevada:
I would like to go on record in support of the bill as amended. We too bring our vehicles home so we can dispatch first thing in the morning without having to go into the office.

Chairman Anderson:
Those are smaller vehicles.

Bob Gastonguay:
Yes, they are under the gross weight of 20,000 pounds.

Robert Robey, Private Citizen, Las Vegas:
I am not opposed to the entire bill. I object to two words of the bill. I have the same question that Assemblyman Manendo raised on the language of "inoperable vehicle." My concern is that we have an abandoned vehicle law, and I do not know what the definition of "inoperable vehicle" would be. We know what an abandoned vehicle is, we can mark it and can see how long it stays there, but an inoperable vehicle might be a vehicle that is only inoperable for a short time. It is my concern that there would be abuse by HOAs; I do not know how an enforcement committee would know whether a vehicle is operable or not. I would like to see a change to those two words.

Chairman Anderson:
I have a letter from you that you sent to Assemblyman McArthur and Assemblyman Hambrick. If you would like, I can have it placed in the record for the day (Exhibit E).

Robert Robey:
That would be fine.

Chairman Anderson:
The term "inoperable vehicle" is of concern. If my car does not start in the morning, and I roll it out in the driveway for the tow truck, can I be cited by the HOA while it is sitting out there and I go off to work?

Mr. Anthony, can you look into "inoperable vehicle" versus "abandoned vehicle"? Being sympathetic to the situation of someone who went off to war for a time, would he be eligible to leave his vehicle in the driveway of his home? I do not think that one would want him to be cited.

Nick Anthony:
If it is the Committee's intent, we can research that and see if we can craft a definition of "abandoned" that might work, if you prefer to remove "inoperable" and substitute "abandoned."

Chairman Anderson:
Assemblyman Conklin, when you were requesting the drafting of this bill, did you think about the term "inoperable" versus "abandoned"?

Assemblyman Conklin:
To the best of my recollection, the word "inoperable" was not in our original request. This may have been a drafting choice by the legal staff. I am willing to go back and look because we did provide language from last session's bill as the basis for this one. I am happy to do that.

On a different note, I am not opposed to the request to use the word "notwithstanding." We think it is already covered, but if it is the pleasure of the Committee to address the issue, we certainly agree with you and your staff's interpretation of section 1, that the public utility's jurisdiction remains secure, but the provisions in section 2 apply strictly to parking.

Chairman Anderson:
We will see what legal staff has to say.

Mr. Robey, I think that the parking question is already an existing law under NRS 116.350, so you cannot do that currently. One could not leave a vehicle there while he went off to military service. We are not trying to expand that. Is that what your desire is?

Robert Robey:
No, that was not my desire. I thought of the same example as you did: waiting for repair to a vehicle. It could happen that repair technicians do not get there for a couple of days, and meanwhile one gets fined. I was concerned about the implication of "inoperable vehicle." I do not know how it would be defined.

Assemblyman Manendo:
I know that this applies to HOAs, but what if someone happens to live in an apartment complex. Have you heard any complaints from any employees that live in an apartment complex where there is no HOA, but other tenants may not like having utility trucks parked in their lot? I do not know if that is an issue, because I am sure that there are quite a few people who live in apartment complexes. Since we are on this subject, I thought that someone would know.

Judy Stokey:
We have not had any employees complain about issues with their apartments. I know that apartments have certain rules, but we have not had any complaints. Typically, the problem is with HOAs with single residents and some condos.

Assemblyman Manendo:
I know that it is a different chapter: that would be Chapter 118A of NRS.

Chairman Anderson:
Legal has indicated that under NRS 487.210, the definition of "abandoned" would be a vehicle that has not been moved by 15 days after notice.

I do not want to put an additional burden on HOAs to have to give notice.

Let us close the hearing on A.B. 129.

Let me indicate that we have the amendments that are suggested, and we are waiting for those that are going to be presented by Lewis and Roca. We will see whether the bill drafter finds it necessary to make those changes. I will ask Mr. Anthony if there is a suggested language change that might help with the issue of defining "inoperable."

Let us turn our attention to Assemblyman Conklin's second piece of legislation.

We will open the hearing on Assembly Bill 132.

Assembly Bill 132: Revises certain provisions relating to an award of damages in an action for forcible or unlawful entry or detention of real property. (BDR 3-791)

Assemblyman Marcus Conklin, Clark County Assembly District No. 37:
Assembly Bill 132 is, generally speaking, out of my area of expertise, but this is a case of injustice. It seeks to address something that happened in the State of Nevada very recently with respect to injustice.

I hope that the members of this Committee listen intently to the history behind this bill. It came to me by way of foreclosure, which is more my area of jurisdiction in dealing with foreclosures and foreclosure processes and things related to Commerce and Labor, but I could not pass up the opportunity to address this issue, even though it is more a question of law and judiciary, because of its nature and the unique loss suffered by this particular individual.

Chairman Anderson:
I would indicate that at the first meeting of this Committee, this case was taken up by Mr. Anthony as part of our general briefing. Since Assemblyman Conklin had a bill draft, there was no need for the Committee to do a separate request for clarification of the law. Mr. Bradley, I presume that it is your intent to have the writing that has been submitted from the Nevada Justice Association put into the record for this day (Exhibit F).

Bill Bradley, representing Nevada Justice Association, Reno, Nevada:
Assembly Bill 132 is designed to address the Supreme Court opinion that you have in front of you: *Countrywide Home Loans v. Thitchener*, 124 Nev. Adv. Op. No. 64 (2008). Assembly Bill 132 is designed to make the foreclosure effort done conscientiously and responsibly by those who are forced to do foreclosures on people's homes and other property.

In the *Thitchener* case, the Thitcheners owned a home in Las Vegas. Mr. Thitchener was in the armed services, got out of active duty, and immediately signed up to go into the Reserves, but the only place they could place him was in Tucson, Arizona. He moved down to Tucson and left his family and home in Las Vegas. They continued to pay their mortgage but did fall behind three months in 2002.

The family started spending more time with Mr. Thitchener in Tucson. When they had first missed three payments, that activated a review procedure at Countrywide that required them to look at the loan and make sure things were safe. They sent a contractor to look at the house, and he determined that it was in good shape. The Thitcheners then became current on their mortgage.

Unfortunately, in the same condominium complex, another owner went into default with Countrywide, and they asked the same contractor to look at his condo, but they forgot to put the condo number on the contractor's inspection form. The contractor, having been out to the complex one time before, thought that Countrywide must have meant the same condo. He went in and determined that it was subject to foreclosure. Countrywide then started its foreclosure procedures. They hired a real estate agent who put the utility bills in his name. The real estate agent hired a salvager, who comes into foreclosed homes and sells all of the property. The Thitcheners, who are down in Tucson, have no idea this is going on. The salvager sold all of their sentimental personal property, including a picture of Mr. Thitchener receiving an award from President Bush.

Sometime during this process, the salvager realized that the homeowner's dues had been paid, and things are not making sense. The salvager started looking into it, and he figured out that someone still owned this home and was current with payments. Countrywide, when the inspection took place, placed the home into foreclosure because they were told it was empty by the contractor. They did not realize that they were talking about two separate condo units. When they finally realized what had happened, it was too late. The personal property had already been sold. Then they made the mistake of trying to hide what they had done instead of addressing the problem right away. The family was trying to contact Countrywide's legal department, but they were not

returning the calls. The rest of the property was sold, and this family lost everything.

The Thitcheners were forced to bring an action against Countrywide for "conversion" of their property. "Conversion" is when someone takes another person's property and sells it. They brought several causes of action, and that is the reason for the length in this opinion; much of it is irrelevant to this discussion. The jury did award the Thitcheners damages for their loss of sentimental property. There is a statute in NRS 40.170, over which this Committee has jurisdiction, which states, "If a person recovers damages for a forcible or unlawful entry in or upon, or detention of, any building or any cultivated or uncultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed." If you think about it, if a person's property is sold, and he has to go through the legal process to get it back, he will not be made whole because someone will have to pay the lawyer out of the recovery of the judgment.

The treble damages are designed to do two things. They are designed to make sure that there is an incentive—and before someone takes another person's property and disposes of it, he does it conscientiously and responsibly. Treble damages are also designed to make that person whole if he has to bring a lawsuit.

The jury did award them damages for the loss of their personal sentimental property, and the trial judge, having read this statute, tripled the damages and entered judgment. The case went up to the Nevada Supreme Court, and they looked at this case and said that this statute is ambiguous. It does not quite address whether the trebling of damages applies to the personal property. It clearly applies to the real property, but there is no damage done to the real property when this process takes place. In this case, the jury awarded the Thitcheners $1000 for minor damage done to the real property, and they awarded $300,000 for the loss of their personal property. The Supreme Court determined that the statute is ambiguous and does not cover the conversion of personal property. The Supreme Court reduced the damages down to the original amount and refused to treble the damages. They pointed out that there is an ambiguity in the statute.

We saw this as extremely timely in light of this horrible economic time with the unimaginable amount of foreclosures going on. We felt that it was appropriate that Nevada give the message that foreclosures need to be done conscientiously and responsibly. If the lender does not, there will be a consequence, and that consequence will be the trebling of the damage awarded for both the real property and the personal property. That is the purpose of this bill.

Bill Bradley:
I would like to add that we did work with the Legislative Counsel Bureau (LCB), and we closely analyzed the opinion. The LCB felt, and I hope that Mr. Anthony agrees, that this small change in the definition of actual damages, expanding it to include both real and personal property, was beneficial.

Chairman Anderson:
This is a prime example that there is no such thing as a simple bill. There is nothing more difficult than changing a single word. This piece of legislation seems to be what we had intended, yet the court is of a different opinion.

We will close the hearing on A.B. 132.

The Chair will entertain a motion.

> ASSEMBLYMAN MANENDO MOVED TO DO PASS ASSEMBLY BILL 132.
>
> ASSEMBLYMAN MORTENSON SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

[Recessed.]

Vice Chair Segerblom:
[Reconvened.]

We will open the hearing on Assembly Bill 108.

Assembly Bill 108: Revises provisions governing community managers of common-interest communities. (BDR 10-178)

Assemblyman John Oceguera, Clark County Assembly District No. 16:
I am here to present Assembly Bill 108. This bill continues the Legislature's efforts to assist the many Nevada residents who live in HOA and common-interest communities. When choosing a home, particularly in southern Nevada, there are few options outside of a common-interest community. In most cases, boards are run fairly, according to the law, and without abuse of power. Ideally, a board operates with the goal of ensuring that residents can enjoy their homes without infringing on the ability of their neighbors to do the same. However, when boards operate outside of the law or abuse their power, it can be a nightmare for those living within the community.

In virtually every session over the past two decades, we have passed bills to address the abuses of power and to give residents the necessary tools to keep watch over the board that governs their daily lives. Unfortunately, homeowners are still being harmed by ethical lapses by their boards.

I requested A.B. 108 after reading stories about a Federal Bureau of Investigation (FBI) investigation into the possible collusion between members of the boards, community managers, contractors, and attorneys involved in construction defect lawsuits. The Legislature needs to revisit the rules governing HOAs and their managers to make sure that the finances and rights of ordinary homeowners are being protected.

The majority of the language in A.B. 108 is not new. I have asked that certain sections of the *Nevada Administrative Code* (NAC) be placed in the NRS to give these important sections more prominence in the law.

As a side note, it seems that we often have to say, "I really mean it." This is another one of these "I really mean it" clauses.

I would like to go over the sections of the bill.

Assembly Bill 108 does four main things. First, it requires a community manager to make a complete disclosure before entering into a management agreement with an association. Second, it establishes detailed standards for those management agreements. Third, it establishes comprehensive standards of practice for community managers. Fourth, it prohibits certain activities of community managers.

Section 1 of the bill provides that an HOA board's budget must itemize expenses expected each month and requires two signatures for any nonrecurring expenditures over a certain amount. I will get to that in a moment. I have an amendment that touches on that, and I will go over the amendments. There are a few little changes that we have made after consulting with the industry, and I will get to that after my initial comments.

Sections 2, 10, 11, and 12 are primarily technical sections that incorporate the new language into the existing laws governing community managers.

Sections 4 and 5 define "client" and "management agreement."

Section 6 requires a community manager to make written disclosures before entering into a management agreement. He must disclose whether he expects to receive any direct or indirect compensation from anyone providing services to

the association, any affiliation with or financial interest in a supplier, and any pecuniary relationships with any unit owner, board member, or officer.

Section 7 establishes 16 required elements and 2 discretionary elements for management agreements. Among many other requirements, an agreement must put spending limits on community managers, cover the grounds and procedure for terminating managers, and require community managers to carry insurance and post a surety bond in the amount of $1 million for losses actionable under Chapter 616 of *Nevada Revised Statutes* (NRS).

I would like to emphasize that the requirement to include a complete schedule of all fees, costs, expenses, and charges to be imposed is critical for homeowners, home sellers, and home purchasers. These fees and charges can become quite large and can actually impair the ability to buy or sell a home. In some cases, managers have charged hundreds of dollars in transfer fees to change ownership when someone buys in a community. The manager might also charge a large fee, for example $500, to open a file for the new owner and a fee to close the file when an owner sells his home and moves away. These are just a few examples. Statutorily mandating that all of these fees be in writing is critical so the community's board knows what it is the owners will be subject to financially. There should be no surprises. I do not think that we care what the fees are as long as we know it in advance.

Section 8 establishes 22 specific standards of practice for community managers. I will not take the time to go over each one, but I will point out that a community manager must act as a fiduciary in any client relationship, provide an annual financial audit, and, where practical, obtain at least three qualified bids for any capital improvement project.

Section 9 lists prohibited acts. A community manager must not impede or interfere with an investigation by the Real Estate Division. They must also not comingle money, sign on withdrawals from a client's reserve account, provide services outside of their field of expertise or competence, or take other harmful actions. This section is designed to eliminate certain practices that are, what could be called, bribes of community managers, such as money, trips, et cetera. These practices might be used, for example, to persuade a community manager to send business, such as landscaping or construction, to a particular individual or business.

As many laws as we have passed to guarantee that homeowners are protected from unscrupulous behavior, we continue to face these problems. I think that this legislation will go a long way toward making sure that the actions of the community manager are honest and well-regulated. Putting these existing

regulations into NRS will strengthen the ability of regulators to enforce them, as they will have been adopted by the full Legislature and not just by a division or an Executive Branch agency.

I would like to go over the amendment (Exhibit G).

In section 1, line 17, the proposed amendment adds a monetary value. The way that it was written before, one would need two signatures, on any check, but this adds a monetary value, so if the check is in excess of $100, then one would need two signatures.

Section 6 used to read "personal relationship," and we would like to change that to "pecuniary" in order to have more of a legal definition. In a "personal relationship," one could know a person living in the community.

Section 7 removes the requirement that insurance be obtained through separate carriers. From discussion with the industry, there are only a small number of carriers that do this type of insurance.

The change at section 8, lines 21 and 22, clarifies that documentation needs to be authorized and that a legal notice must be provided to each of the units' owners.

Section 9 clarifies that the payment must be applied intentionally. In the previous version, it said "apply," and that seemed ambiguous.

Assemblyman Manendo:
Where did you say, in the bill, that it talks about gifts for the community managers?

Assemblyman Oceguera:
Section 9, subsection 11(b) on page 11, lines 13 through 17.

Assemblyman Manendo:
Is this any gift, or is there an amount?

Assemblyman Oceguera:
This section asks for disclosure. We are asking for this so we know and can make an educated decision.

Assemblyman Manendo:
I believe that we put a limit on the amount of gifts in the past. I did not know if that was going to change or not. As an example, this was an issue in my

district. A board decided that their homeowners needed to contract with a specific landscaping company, but that landscaping company took longer than 30 days to finish the job. That board fined that homeowner $1000 for not having the landscaping done in time. We found out that the board president and this landscaping company were working together. My constituent did not realize that there was a fine if the job went over the 30 days. Is this legislation going to apply to a situation like that?

Assemblyman Oceguera:
Yes, that is exactly what this legislation is aimed at curtailing. This legislation is putting an ethical standard in the law.

Assemblyman Manendo:
I appreciate that. In a situation where a board is hiring relatives to do cleaning of the pools or for property security, is the bill going to affect something like that as well?

Assemblyman Oceguera:
I believe so.

Assemblywoman Dondero Loop:
Will this bill pertain only to those HOAs from this point forward, or will it go back and be retroactive?

Assemblyman Oceguera:
It would be from this point forward.

Assemblyman Carpenter:
Are most of these rules and regulations already in the NAC?

Assemblyman Oceguera:
Most of them are.

Assemblyman Mortenson:
Going back to Assemblyman Manendo's question, in a situation where the HOA told the gentleman that he had to deal with this particular landscaper, would your bill change it so that he could get three bids from three different landscapers?

Assemblyman Oceguera:
I would have to defer to Legal on that. I am not sure if that would be a capital improvement project. I would have to digest the language specifically, so I would ask our legal counsel.

Vice Chair Segerblom:
Mr. Anthony, do you have an explanation?

Assemblyman Mortenson, can we have a couple of minutes?

Assemblyman Mortenson:
Yes, certainly. I am merely interested in this in a different application. The contractor that I am working with on my house has said that I must go to certain purveyors of services and materials, and I find them very expensive.

I think it would be good if HOAs did not have to insist on a particular purveyor of a service.

Vice Chair Segerblom:
I know that it is part of the intent of this bill. Much of this bill is already in regulation, so there may be some history that Mr. Buckley may testify about.

Kevin Wallace, President, CAMEO, Las Vegas, Nevada:
We are in favor of the bill.

Angela Rock, Olympia Group Companies, Las Vegas, Nevada:
We want to put our support on the record. We are in favor of the bill.

Teresa McKee, representing Nevada Association of Realtors, Reno, Nevada:
We stand particularly in support of section 7, subsection 1 (n), regarding stating the physical location and 60 miles. It is at the top of page 7 of the bill. As to the rest of the bill, we remain neutral.

Vice Chair Segerblom:
Can you explain why you are so interested in that?

Teresa McKee:
There have been problems with some of our smaller associations being able to gain access to the records, so we strongly support records being kept within 60 miles of the physical location of the common-interest community.

[Assemblyman Anderson came back but did not take over chair.]

Michael Buckley, Commissioner, Commission for Common Interest Communities and Condominium Hotels, Las Vegas, Nevada:
I had a couple of notes. I think that the bill sets forth many good ideas, and most of those ideas came from the Commission. This bill adopts the Commission's regulations. There are a couple of differences, and I would hope

that in the process of this bill going forward, the differences between the bill and the regulation will be made consistent. For example, we just concluded public hearings and workshops on NAC 116.300, which is one of the sections proposed in the bill, and made certain changes which will be going to LCB. I am concerned that we have two sets of rules going forward on two different tracks. I think that it is confusing to the regulators and the regulated if there are differences.

One thing that I would like to point out, and I mentioned in my written testimony (Exhibit H), even differences seemingly as minor as page 5, line 17, can be significant. It refers to a management agreement as a written agreement or contract. That would seem to mean that this statute would only apply to written agreements, whereas the regulation applies to any arrangement whether it is written or not. Those are the types of small details that need to be paid attention to.

I would also direct the Committee and legal counsel to NRS 116.31185 and 116.31187, which are existing codes of ethics dealing with board members and managers. In order for people to be able to comply with these rules and statutes, they need to be clear and not overlapping or confusing.

I spoke with the head of the compliance division and asked him whether it made a difference in enforcing these requirements if it were a regulation or a statute. As far as the Real Estate Division was concerned, it made no difference and was enforced either way. I am speaking for myself and not for the Commission since we have not looked at it overall, but the points in here are good points and have been adopted by the Commission. We would hope that there would be some consistency between the statute and the regulations.

Assemblyman McArthur:
I wanted to clear something up. For the people who testified in favor of this bill, were you in favor of it with the amendments?

[No response.]

Assemblyman Anderson:
Mr. Buckley, are you of the opinion that this is going to impede your ability to do other parts of the regulatory process that you may feel are necessary? It appears that there is the opportunity for regulation to move forward. Regulators do not control the Legislature; the legislation is supposed to give you the opportunity to regulate.

Michael Buckley:
I do not think that this would impede anything. What I am concerned about is, for example, NAC 116.300, which is section 8 of this bill if I am not mistaken, was amended in 2005. The regulation was developed over the course of nine months at our Commission. After it had been in effect for a year or so, there was some changing of the language, and that was amended in 2006. The Commission is now amending it again. My main concern is that when we get into such great detail in the statute, if there is a problem, it becomes difficult to change it. We have to come up to the Legislature, which meets every two years, to change it rather than reacting and being able to work with our constituency to change it. We do have public hearings that result in some of these changes.

Assemblyman Anderson:
The importance of putting it into statute means that there will be a standard that everyone can clearly come to and see and make the regulators recognize their role as subordinate to that of the NRS. You are not suggesting, I would hope, that regulation would supersede statutory language?

Michael Buckley:
No, of course not.

Vice Chair Segerblom:
Mr. Buckley, I think that the frustration is this: if these regulations were so effective or reinforced, we would not have seen what we saw last fall with these inappropriate relationships. Do you feel that the existing regulations were not being used or were being ignored? What was the problem?

Michael Buckley:
When I read about that in the newspaper, I had the same reaction. I thought to myself, where was the Real Estate Division in this? The more I thought about it, the more I realized that the Real Estate Division is not the police department. It took an FBI investigation to sort this out. The Real Estate Division does not have the same resources as the FBI. The Real Estate Division's and the Commission's mission is education and licensing, but it is not the police department. It does not have the resources to ferret out criminal activity.

Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Reno, Nevada:
I sent an email to the Committee on Monday, and I have requested that the hard copy be passed out (Exhibit I).

I want to state for the record that I am not opposed to the rules and regulations. These are very important rules and regulations that have been adopted to bring some professionalism to this industry, and I do understand that in Las Vegas there have been some serious abuses.

It seems that during every session since 1995, we have come before this Committee to review proposed amendments to NRS Chapter 116, which was originally adopted as a uniform code. This means that it was adopted in several states under a uniform act, but Nevada has made it very specific and has done so because of specific problems that exist in this area of community living.

The Commission met last week, and I was at those hearings. The Commission came to the conclusion that NAC deals with the control of the manager and not the management company. In my case, it would not necessarily deal with the control of the Caughlin Ranch Homeowners Association, which is a Nevada nonprofit corporation. It is trying to deal with the individuals who are certified by the State of Nevada and their conduct. In that regard, the broader language that exists in the NAC is beneficial to people like me because I am an employee of Caughlin Ranch Homeowners Association. We are talking about the distinction between a manager as an independent contractor and a manager who is under an employment agreement with a management company, with the HOA as the client, and the contractual relationship between a client and a company. That company is not controlled under NAC. This gets much more complex.

I would like to hit the highlights of my written testimony and move forward.

On the first page, the changes in the budgets that are proposed appear to contradict the changes that were required by law, requiring us to switch to the accrual accounting method. I understand that people like to see their expenses on a monthly basis, but state law was changed in 2007 to require us to switch to the accrual accounting method. I try to do it both ways with my board. This is a potential conflict.

Under the current law, you have a requirement that no manager can sign a reserve check. I operate as the day-to-day operator of the HOA, and I do sign a number of checks, which is in accordance with our budget that we approve on an annual basis.

I believe that this is an unnecessary conversion of the NAC regulations to statute. They currently exist, and there is an opportunity to enforce those regulations. When this changes from a general provision for the control of managers who are certified, it will affect employee managers and the

employment agreements with employers. I believe that if it is not done correctly, and specific language is not added to address the employee relationships that some managers have with their associations, this could be a complete abrogation of our agreements, without due process. As an employee of the HOA, I am also required to be covered under certain insurance policies. The directors and officers liability policy, that the HOA currently has, covers me as an employee acting on behalf of the HOA, so I do not need to have a separate policy for errors and omissions.

We also have existing insurance policies, which cover all of our employees, including employees who handle our books. So in effect, unless some of these distinctions are made in this bill, we are going to have much duplication because employee managers will have to get insurance in addition to the insurance we already have.

I request that any attempt to improve this bill by amendment should include protection for community managers who are employees of the community association and protection of the employment agreement between the certified community managers and their HOAs for terms of the contract that are clearly allowed by law.

Assemblyman Mortenson:
If a homeowner is aware that his HOA is disobeying the law, what are his options? Who can he go to, and who is the police force that will come down on that HOA?

Michael Trudell:
Under current regulations, the homeowner can file a complaint with the Real Estate Division, which has investigators who look into all alleged violations of NRS Chapter 116 and NAC Chapter 116.

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry:
The program, the licensees, and the regulation of licensees is under administrative law. We do have authority over the licensees as well as the boards and their functions, and the licensees would be the managers. The law enforcement, the criminal aspect, is a different component. We can try to resolve, through the ombudsman's conferencing programs, any complaints and conflicts that exist. One very important piece of legislation from the 2007 Session gave us the authority to refer investigative information to an appropriate law enforcement agency. Prior to that, our investigative files were all deemed statutorily to be confidential. It was not until there was a hearing with public documents and exhibits, and a complaint was filed, that we could

share information. With the legislation from the last session, the Real Estate Division has been able, in all of our chapters of the law, not just Chapter 116, to refer any information that comes to us in that civil/criminal arena, and we have done that since that legislation has become effective.

Assemblyman Mortenson:
Referred to whom?

Gail Anderson:
It could be the Metropolitan Police (Metro), the FBI, the Department of Treasury, or another regulatory entity such as the Mortgage Lending Division or the Financial Institutions Division.

Assemblyman Mortenson:
You say "may refer." Can the homeowner go around you and refer to Metro, or do they have to go through you?

Gail Anderson:
The homeowner can explore any remedies that they wish to explore. When I say "may," it means that we are allowed by law to share—what formerly was confidential information—investigative file documentation. That is what we do when we see anything along those lines. We can work together with law enforcement entities where we could not before.

Assemblyman Mortenson:
As a routine matter, if you get a complaint and see that it is legitimate, you will automatically refer it to Metro or the appropriate authority?

Gail Anderson:
We do. We consult with the attorney generals who are working with us in the program, as well, beforehand, to be sure that we are on the right track. We might run something concurrently, in our administrative procedures, but we also do not want to interfere, with a bigger picture investigation, so we get advice from the Attorney General's Office. We have done so since the law became effective in the fall of 2007.

Assemblyman Horne:
I am still unclear what the objections are, particularly with regard to regulations. If we already have them in regulations, what harm is there in codifying them?

Michael Trudell:
The harm is that without making clear distinctions between employees, managers, and management companies in each one of these sections, they all

get lumped in together, and I am left trying to sort it out, either in court or through some other mechanism. If we adopt this bill, we need to recognize the distinction that managers are not necessarily working for a management company, and all contracts are not between an HOA and a management company.

Assemblyman Horne:
You are suggesting that existing regulations need to be changed? This is just transferring them out of regulations and putting them into statute.

Michael Trudell:
If this bill is adopted and becomes statute, it will become more difficult for us to try to work with staff on how these different rules apply in different contractual relationships. I think that there is a distinct contractual relationship between an employee and an HOA that is not covered by the current code, but it can be recognized by the division when they are investigating whether or not I am in compliance as a certified community manager.

Assemblyman Oceguera:
This question came up during the drafting of this bill, and we did consult with Legal. I might defer that to Legal. That was something that we discussed with Legal early on.

Nick Anthony:
Yes, that is correct. The definition in this bill that refers to manager includes "person," which, in the preliminary chapters of NRS, includes any individual, corporation, partnership, et cetera.

Vice Chair Segerblom:
Mr. Anthony, did you have a chance to find an answer to Assemblyman Mortenson's earlier question?

Nick Anthony:
I did, and I spoke with him. The exact language of the bill does require a manager to "obtain when practicable," which means if there are at least three qualified bids available, then a manager must go out for at least three bids.

Michael Buckley:
I had an answer to Assemblyman Horne's question. In section 7, page 6, lines 26 through 35, those are new requirements. Existing regulations simply require that the contract specify who has the insurance and what it is. This would actually require types and amounts of insurance. It does raise a new issue that was not there before.

Assemblyman Horne:
I understand about the additional insurance requirement. My concern is with the cutting and pasting of regulations into statute. If you are already required to do something by regulation, and now you object to putting it into statute, that raises a red flag for me: we had some latitude in compliance under the regulations, but if we put it in statute we have lost that latitude, so we want to keep it out of statute. That always concerns me.

[Chairman Anderson resumes chair.]

Chairman Anderson:
Let us close the hearing on A.B. 108.

[Meeting adjourned at 10:27 a.m.]

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 25, 2009 Time of Meeting: 8:13 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 129	C	Debra Gallo	Pictures of Southwest Gas trucks.
A.B. 129	D	Debra Gallo	Proposed amendment to Assembly Bill 129.
A.B. 129	E	Robert Robey	Letter opposing word choice in Assembly Bill 129.
A.B. 132	F	Bill Bradley	Supreme Court case *Countrywide Home Loans versus Thitchener*.
A.B. 108	G	Assemblyman John Oceguera	Mock-up of proposed amendment to Assembly Bill 108.
A.B. 108	H	Michael Buckley	Written testimony in opposition to Assembly Bill 108.
A.B. 108	I	Michael Trudell	Letter opposing Assembly Bill 108.